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Towing vessel inspection proposal

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On August 11, 2011, the US Coast Guard published in the Federal Register its proposal for an inspection regime for US-flag towing vessels. The towing vessel inspection program was first mandated by Congress in 2004. Creating a wholly new inspection program has not been easy, in large part because the commercial towing vessel industry in the United States is highly diverse. There are a handful of large towing companies with sophisticated management systems. There are a number of medium-sized towing companies operating a variety of vessels engaged in different types of towing in several locations. Finally, there are numerous small (some truly mom-and-pop) companies operating a small number of vessels out of one or two locations. Establishment of a regulatory regime that adequately accounts for these different situations is quite challenging.

Rather than tackle the entire towing industry in the first iteration, the Coast Guard has hived off a few segments. First, the new inspection regime would not apply to towing vessels that are already subject to inspection. This exempts towing vessels currently subject to inspection as sea-going motor vessels from having to comply with two sets of inspection requirements. Small towing vessels (less than 26 feet or eight meters in length) would be exempt unless used for pushing, pulling, or hauling a barge that is carrying dangerous or hazardous materials. Also exempt would be a vessel used for assistance towing; towing recreational vessels for salvage; or transporting/assisting the navigation of recreational vessels within or between marinas and marina facilities within a limited geographical area. Work boats would be exempt if operating exclusively within a worksite and performing intermittent towing within the worksite.

The proposal, if adopted, would establish safety regulations governing the inspection, standards, and safety management systems of towing vessels. Regulations would address the following major topics: (1) certification; (2) vessel compliance; (3) Towing Safety Management Systems (TSMSs); (4) third-party organizations; (5) operations; (6) lifesaving; (7) fire protection; (8) machinery and electrical systems and equipment; and (9) construction and arrangement. Potential requirements for hours of service or crew endurance management for mariners aboard towing vessels have been deferred at this time, with additional data, information, and public comment specifically sought by the Coast Guard. The intent of the rulemaking is to promote safer work practices and to reduce casualties involving towing vessels

by requiring that towing vessels and the companies that own and operate them adhere to prescribed safety standards and safety management systems.

Compliance could be demonstrated by one of two means: (a) the vessel and its owner/operator would be subject to the usual Coast Guard inspection regime; or (b) the vessel and its owner/operator would be subject to audit by an approved third-party organization with periodic oversight by the US Coast Guard. The rulemaking is worded so as to indicate that the owner/operator may select either of the two options. Actually, if the third-party organization option is not selected, the vessels of the owner/operator will automatically be subject to the usual Coast Guard inspection regime. The owner/operator may choose separate options for separate vessels within their fleet. It is important that the owner/operator decide as soon as possible after the final rule comes into effect (but not later than two years thereafter) if the third-party organization selection is to be made. The regulations, as proposed, allow for a change in options, but the burden is on the owner/operator to demonstrate compliance with the requirements of the newly-elected option prior to approval.

The regulations, as proposed, allow the owner/operator two years after the requirements come into effect to develop and implement a Towing Safety Management System [TSMS] (if the third-party organization option is selected) or to otherwise bring their towing vessels into compliance (if the Coast Guard inspection regime is selected). It then provides for a four-year phase-in schedule for issuance of Certificates of Inspection (COIs). For an owner/operator of more than one towing vessel, 25% of the company's towing vessels must have onboard a valid COI. Within two years, 50% of the company's towing vessels must have onboard a valid COI. Within three years, 75% of the company's towing vessels must have onboard a valid COI. Within four years, 100% of the company's towing vessels must have onboard a valid COI.

The rulemaking seems to assume that the towing vessel fleet will remain relatively static as no provision is made for the sale or transfer of towing vessels from one company to another. It is unclear what occurs when a towing vessel the COI of which is based on the owner/operator's participation in an approved TSMS is transferred to an owner/operator that does not participate in an approved TSMS (or utilizes a different TSMS). It is recommended that, prior to finalization, the rulemaking be amended to address this issue. On the same theme, the rulemaking should address the process for a change in its TSMS, including a change in a company's third-party organization. The rulemaking should also address the situation where, for instance, in year three, a towing vessel that has not yet acquired a COI is transferred to a new owner. On a related issue, would establishment of a single-ship corporation for each towing vessel delay the COI deadline until year four?

The Coast Guard is providing an alternative means by which compliance with certain lifesaving or machinery and electrical requirements may be demonstrated. For those provisions, compliance with certain functional requirements may be utilized in lieu of compliance with the usual proscriptive regulations. The Coast Guard should consider expansion of this concept to a broader range of its rulemakings.

This rulemaking was not created by the Coast Guard out of whole cloth. Meetings with industry representatives and other stakeholders were held shortly after the enabling statute was enacted in 2004. An in-depth study of the towing industry, its composition, and its safety record was conducted to inform the project. The Towing Safety Advisory Committee (TSAC) established a working group to analyze implementation of the inspection regime. The rulemaking tracks closely the recommendations of the TSAC working group. The TSMS proposed in the rulemaking builds on the Responsible Carrier Program (RCP) of the American Waterways Operators (AWO) trade association. In 2009, the Coast Guard established the Towing Vessel Bridging Program (TVBP) to ease the transition of these vessels from uninspected status to inspected status. As mentioned above, there is room for improvement in this rulemaking, but it represents a solid first step to enhancing safety in this important industry.

Public meetings on this rulemaking have not been scheduled as of the writing of this article, but are expected to be announced shortly. It behooves owners and operators, as well as potential third-party organizations, to actively participate in the rulemaking process. The Coast Guard cannot address your particular concern or your unique situation if that concern or situation is not brought to the agency's attention in a timely manner.